

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Company)	
d/b/a AmerenIP)	
and Ameren Illinois Transmission Company)	
)	
Petition for a Certificate of Public Convenience)	
and Necessity, pursuant to Section 8-406 of the)	
Illinois Public Utilities Act, to construct,)	
operate and maintain new 138,000 volt electric)	06-0706
lines in LaSalle County, Illinois.)	

**RESPONSE TO INITIAL BRIEF OF ILLINOIS POWER COMPANY D/B/A
AMERENIP AND AMEREN TRANSMISSION COMPANY**

Now comes Fred M. Morelli Jr. Attorney for Skydive Chicago, Inc., Ottawa Airport Inc., and the Fox River Alliance, hereinafter referred to as “the River People” and for their Response to the Initial Brief heretofore filed by Ameren at the close of the recent Intervener’s evidence and testimony state as follows:

SUMMARY OF ARGUMENT

In its Initial Brief, Ameren concedes that “Ameren did not propose the Fox River as its primary route; rather Ameren selected the highway 71 route as its first choice.

“Ameren did not propose the Fox River Route as its primary route; rather Ameren selected the Highway Route as the primary route. (Tr.(R-O) 144-45.) However, in light of opposition to the Highway Route, and in the absence of opposition to the Fox River Route, Ameren agreed to support the Fox River Route through a Stipulation with Ottawa and IL 71 entered on December 19, 2007 (the “Stipulation). An important factor in Ameren’s decision was its desire to accommodate the concerns of parties such as Ottawa who intervened during the first phase of this proceeding.”

In that same paragraph (Page 2)” Ameren concedes that “by way of Stipulation, Ameren has agreed to the Fox River Route.”

On the same page, by way of background, Ameren concedes, and I quote “Ameren preferred the Highway Route, in part due to the fact that it was easier to construct and maintain.”

Ameren refers extensively to the Stipulation which they entered into. However the Commission must consider Ameren’s previous position and the testimony and all evidence including that submitted by Ameren. We ask the commission to consider the previously expressed position taken by Ameren favoring the route along Highway 71 and the preference and evidence submitted by Ameren, all occurring prior to entering into the Stipulation.

Despite the fact that Ameren is the only participant to this proceeding adhering to the stipulation; Ameren has meticulously adhered to both the letter and the spirit of the Stipulation, this, despite Fox River Alliance’s plea to common sense and concerns regarding public safety.

In their Initial Brief, Ameren relies heavily on the testimony of Dr. Paul Mixon. However, a reading of Dr. Paul Mixon’s testimony reveals that his knowledge is based on traveling “most” of the route by automobile. A view of the aerial photos and testimony introduced by other individuals shows that there is not an automobile route along the Fox River; closer than five miles. He did not engage in any over flights, he does not testify that he reviewed aerial photos. Therefore, his testimony is hardly worthy of consideration. He failed to notice that there was an airport. He failed to notice that there was a helicopter pad. He failed to notice that there was a skydiving operation in progress; much less the magnitude of that skydiving operation. His opinion that the better route was the route along the Fox River; defies common sense, and is based on faulty or insufficient information.

To respond to Ameren’s twelve routing criteria, we state as follows:

1. Length of the line – We concede that the route along the Fox River is .1 mile shorter. It is our position that the .1 mile is inconsequential and therefore length of line favors neither route.

2. Difficulty and cost of construction – Even taking Ameren's figures, the difference in the cost of construction of over \$500,000.00 is not inconsequential particularly in the light of the intervener's testimony. Ameren's witnesses testified that the Highway Route was originally selected as preferred because it is easier to construct. (Tr. (R-O) 144-45). This criteria favors the Highway Route.

3. Difficulty and cost of operation and maintenance – Ameren concedes that this factor favors the highway 71 route. Though Ameren has made this concession I feel compelled to point that there is no testimony as to how a skydiver or helicopter crew will be extricated from the line when the inevitable accident occurs.

4. Environmental Impacts – In its comments regarding environmental impact, Ameren relies heavily on Dr. Paul Mixon's testimony. As previously noted, Dr. Mixon alleges he viewed the route by automobile which is an impossibility. His testimony regarding environmental impact should be disregarded. The testimony of Dr. John Sabuco, Jeff Petzel, Artillery Reinwald, II and others must be given more weight, as they all viewed the route either by air, on foot or a combination thereof.

In their Initial Brief, Ameren recites that "Ameren has met or will meet with the following agencies regarding the proposed route, to determine environmental impacts and compliance with their regulations: Illinois Department of Agriculture, United States Army Corp. of Engineers, Illinois Environmental Protection Agency, Illinois Department of Transportation – Division of Highways, Illinois Department of Transportation – Division of Aeronautics, United States Fish and Wildlife Service, and the Federal Aviation Administration".

Only one of the listed agencies has to do with the highways (IL Route 71) five with problems of the river route. The mere fact that all of those agencies must be dealt with indicates that the cost of construction and the cost of maintenance will be extensive. It will take additional time to satisfy those agencies and; at this point, no one knows exactly what Ameren will have to do to satisfy the bureaucracy of the agencies named in their Initial Brief nor do we know how much it will cost or how long it will take.

In that same section, Ameren recites that the Interveners raised issues that were either addressed in the initial phase of the proceeding or fall within the jurisdiction of other Federal or State authorities. While the helicopter pad, the airport and the skydiving operation will fall under the authority of the Federal Aviation Authority and while the agencies named will have input, the mere fact that Ameren has conceded that this plethora of agencies have jurisdiction, makes the River Route immeasurably more complicated and more complex than the Highway Route. This factor plus the evidence and common sense indicate the inescapable conclusion that the environmental impact factor favors the construction of the line along Illinois Highway 71.

5. Impacts on historical resources – Ameren refers to its Exhibit 10.0, Page 11, however Kirk Smith’s Testimony seems to overrule that as it relates to his very house and the historic structures located in the unincorporated Village of Dayton. While this one may be a close call, this criteria favors construction of the line along highway 71.

6. Social and land use impacts – Ameren relies on statements made by the City of Ottawa prior to the appearance of the most recent Interveners. He refers to a “strong preference” by the City of Ottawa. That strong preference is no longer in existence. Please see Fox River Alliance Ex. 1 wherein the City of Ottawa expresses a preference that the line be constructed along highway 71. Ameren fails to mention the opposition by the government of the Township of Dayton, through which the power line would go. Ameren ignores the impact on the recreational use of the Fox River; the impact of the probable demise of Skydive Chicago and

business it brings into the City of Ottawa. Ameren apparently wants the Commission to ignore those factors. Ameren's conclusion that criteria 6 favors construction along the river is simply not accurate particularly when one notes that the RT. 71 resistors have voluntarily chosen to no longer participate in these proceedings. It is clear that criteria 6 favors construction along highway 71.

7. Number of affected landowners or other stakeholders – The assertions made in Ameren's Factor 7 are simply not true. Please see Kirk D. Smith's Testimony, also please consider the Skydivers, General Aviation and the General Public all of whom are stakeholders.. Once again we ask the Commission to take note that the Rt. 71 Resistors have chosen to no longer participate. Therefore this criteria weighs heavily in favor of the route along Highway 71.

8. Proximity to homes and other structures - Ameren asserts that many of the structures along the Fox River are "campsites, cabins and other seasonal shelters" and concludes that neither route is the preferred route. That conclusion is not supported by the evidence and is simply not accurate. The evidence is to the contrary. Factor 8 strongly favors the route along highway 71.

9. Proximity to existing or planned development - Ameren relies heavily on "planned development" which, at this point, in this economy, is speculative at best. The route along the Fox River will affect more existing development. Common sense should dictate that consideration of existing development should take precedence over the uncertainty of planned developments. Therefore factor 9 strongly favors the Highway 71 Route.

10. Community acceptance – Depending on the definition of community, the route along the Fox River will not be accepted by the general public as a wanton despoliation of one of Illinois greatest natural resources. That is not something the public is going to accept lightly. It will not be accepted by potential patients at the Ottawa Hospital whose evacuation by helicopter

might be necessary. It will not be accepted by the skydiving community at large; whose numbers are set forth in the testimony of Randy Ottinger and Matthew Nelson and number in the tens of thousands. Ameren arrived at the conclusion that there can be no argument that the community neither accepts or opposes any route was made before the recent Interveners became aware that the route along the Fox River had been chosen and before their testimony and evidence was submitted. It is now apparent that the community (by any definition) will not accept a route along the Fox River. The community acceptance criteria strongly favor the Route 71 Route.

11. Visual impact – I hesitate to even respond to the point attempted to be made by Ameren in factor 11. It simply does not make sense to compare the scenery along a busy highway to the scenic Fox River as it approaches the Illinois River. Ameren’s position on this criteria defies reason and common sense. This criteria strongly favors construction along highway 71.

12. Presence of existing corridors – The Railroad has been present for decades and has blended into the scenery. Trees are within twenty feet of the rail road tracks on either side. Illinois route 71 is a heavily traveled two lane highway populated by commercial development and farms. There is nothing scenic about highway 71. This criteria heavily favors construction along Illinois route 71.

Conclusion

Ameren gets an A+ for effort to keep its end of the stipulation. Ameren’s reasoning is strained at best and in the light of its previous position and its own evidence is faulty. The Highway 71 route was called the “primary route” for a reason. Considering the evidence, the twelve criteria, the arguments, and the position of Ameren prior to the stipulation; we respectfully suggest that

the only conclusion which can be reached is that the route along Illinois Route 71 is the route which should be designated.

Respectfully submitted,

By: /s/ Fred M. Morelli Jr.
Fred M. Morelli, Jr.

Law Offices of Fred M. Morelli, Jr.
403 W. Galena Blvd.
Aurora, IL 60507-1416
(630) 892-6665

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NOTICE OF FILING

TO: See attached service list

Please take notice that on April 26, 2010, Fred M. Morelli, Jr., caused to be filed, Response to Initial Brief, in the above captioned preceding with Elizabeth A. Rolando, Chief Clerk of the Illinois Commerce Commission, via electronic mail.

Respectfully submitted,

By: /s/ Fred M. Morelli Jr.
Fred M. Morelli, Jr.

Certificate of Service

I, Fred M. Morelli, Jr., hereby certify that a copy of the foregoing Motion To Amend Testimony was served on all parties on the Service List in Docket No. 06-0706, by electronic mail and regular mail where indicated by (*) on April 26, 2010.

Respectfully submitted,

By: /s/ Fred M. Morelli Jr.
Fred M. Morelli, Jr.

Law Offices of Fred M. Morelli, Jr.
403 W. Galena Blvd.
Aurora, IL 60507-1416
(630) 892-6665

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SERVICE LIST

Elizabeth A. Rolando
Chief Clerk of the Illinois Commerce Commission
527 E. Capital Ave.
Springfield, IL 62701

Service is via electronic mail except regular U.S. Mail where indicated by ().*

John D. Albers, Administrative Law
Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
E-Mail: jalbers@icc.illinois.gov

Frederick J. Blue (*)
3168 E. 9th Rd.
Utica, IL 61373

John L. Cantlin
John L. Cantlin and Associates
760 E. Etna Rd.
Ottawa, IL 61350
E-Mail: cantlin@cantlinlaw.com

Edward C. Fitzhenry
Ameren Services Company
PO Box 66149 (M/C 1310)
1901 Chouteau Ave.
St. Louis, MO 63166-6149
E-Mail: efitzhenry@ameren.com

Christopher W. Flynn, Atty. for
Applicants
Jones Day
77 W. Wacker, Ste. 3500
Chicago, IL 60601-1692
E-Mail: cwflynn@jonesday.com

Troy A. Fodor, Atty. for IMEA
Troy A. Fodor, P.C.
913 S. Sixth St.
Springfield, IL 62703
E-Mail: troyafodor@aol.com

E. M. Fulton Jr., Atty. for IMEA
Troy A. Fodor, P.C.
913 S. Sixth St.
Springfield, IL 62703
E-Mail: emfulton@ameritech.net

Herbert J. Klein, Atty. Village of North
Utica
Law Office of Herbert J. Klein
925 Shooting Park Rd., Ste. A
Peru, IL 61354
E-Mail: hjklein@sbcglobal.net

Anita L. Kopko, Atty. for City of Ottawa
Pool Leigh & Kopko, P.C.
628 Columbus St., Ste. 208
Ottawa, IL 61350 (*)

Patricia Leary, Estate of Margaret M.
Kennedy and
Margaret M. Kennedy Declaration of
Trust
301 W. Union Ave.
Wheaton, IL 60187
E-Mail: trishleary@aol.com

Keith R. Leigh, Atty. for City of Ottawa
Pool Leigh & Kopko, P.C.
628 Columbus St., Ste. 208
Ottawa, IL 61350
E-Mail: keithleigh@mchsi.com

James A. McPhedran, Atty. for City of
LaSalle
Anthony C. Raccuglia & Associates, P.C.
1200 Maple Dr.
Peru, IL 61354
E-Mail: raccuglialaw@insighbb.com

Fred M. Morelli Jr., Atty. for Skydive
Chicago, Inc. &
Ottawa Airport & Individuals
Law Offices of Fred M. Morelli, Jr.
403 W. Galena Blvd.
Aurora, IL 60506
E-Mail: freedomfred@sbcglobal.net

Joseph D. Murphy, Atty. for Intervenors
Meyer Capel, a Professional Corporation
306 W. Church St.
PO Box 6750
Champaign, IL 61826-6750
E-Mail: jmurphy@meyercafel.com

Brien J. Nagle, Successor Trustee of
LeRoy J. Nagle
Declaration of Trust
Nagle & Higgins, P.C.
222 S. Mill St., Ste. 200
Naperville, IL 60540
E-Mail: binagle@naglehiggins.com

James V. Olivero
Office of General Counsel
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
E-Mail: jolivero@icc.illinois.gov

Geoffrey J. Petzel
Friends of the Fox River
155 S. Grove Ave.
Elgin, IL 60120
E-Mail: foxrivereco@yahoo.com

Irene Schindel
5 Notre Dame Dr.
Naperville, IL 60540 (*)

William M. Shay, Atty. for SHOCK
Attorney at Law
456 Fulton St., Ste. 203
Peoria, IL 61602-1220
E-Mail: wms Shay@wms Shay.com

Kirk D. Smith
3120 E. 1961st Rd.
Ottawa, IL 61350
E-Mail: kirk@foxriveralliance.org

Albert D. Sturtevant, Atty. for Applicants
Jones Day
77 W. Wacker
Chicago, IL 60601
E-Mail: adsturtevant@jonesday.com

Steven R. Sullivan, Sr. Vice President
Illinois Power Company d/b/a AmerenIP
One Ameren Plz.
1901 Chouteau Ave.
PO Box 66149, MC 1300
St. Louis, MO 63166-6149
E-Mail: srsullivan@ameren.com

Matthew R. Tomc
Ameren Services Company
PO Box 66149, MC 1310
1901 Chouteau Ave.
St. Louis, MO 63166
E-Mail: mtomc@ameren.com

Katie L. Troccoli
1911 Champlain St.
Ottawa, IL 61350
E-Mail: katiet1@sbcglobal.net

Jackie K. Voiles
607 E. Adams St.
Springfield, IL 62739
E-Mail: jvoiles@ameren.com

Janis Von Qualen
Office of General Counsel
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
E-Mail: jvonqual@icc.illinois.gov

Donna J. Wahlstrom
392 N. 2969 Rd.
LaSalle, IL 61301
E-Mail: cdwahl@comcast.net

Twila L. Yednock
1915 Champlain St.
Ottawa, IL 61350
E-Mail: twila2@sbcglobal.net

Walter J. Zukowski, Atty. for LaSalle-
Peru Township High School Dist. # 120
Zukowski Law Offices
PO Box 484
817 Peoria St.
Peru, IL 61354
E-Mail: zukowski@theramp.net

Daniel J. Reynolds
Halterman-Reynolds, L.L.C.
P.O. Box 858
Ottawa, IL 61350
dreynolds@hrimaging.com